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No. 3:21-cv-00906

TAKEN ON NOVEMBER 28, 2022

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1 S T I P U L A T I O N

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3

4 The deposition of David Herring, taken on
5 behalf of the defendants, remotely via Zoom, by
6 agreement of parties, on November 28, 2022, for all
7 purposes allowed under the Federal Rules of Civil
8 Procedure.

9 It is agreed that Carole K. Briggs, licensed
10 court reporter for the State of Tennessee, may swear the
11 witness, take his deposition, and afterwards reduce same
12 to typewritten form, and that the reading and signing of
13 the completed deposition by the witness is waived.

14 All formalities as to notice, caption,
15 certificate, et cetera, are expressly waived. All
16 objections, except as to the form of the question, are
17 reserved to the hearing.

18

19 (Unless previously provided, all names are spelled
20 phonetically, to the best of the court reporter's
ability.)

21

22

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24

25

1 (Whereupon, the foregoing deposition
2 began at 12:00 p.m.)

3 Whereupon,

4 DAVID HERRING,

5 having been first duly sworn, was examined and deposed
6 as follows:

7 EXAMINATION BY MR. TOMKINS:

8 Q. State your full name, please.

9 A. David Herring.

10 Q. And Mr. Herring, would you spell your last
11 name for the court reporter.

12 A. H-e-r-r-i-n-g.

13 Q. What is your address, please, sir?

14 A. 53 Sonata Street, S-o-n-a-t-a Street,
15 Freeport, Florida 32439.

16 Q. Where are you from, Mr. Herring? Where did
17 you grow up?

18 A. I grew up in Louisiana.

19 Q. What part?

20 A. They called me yankee. I was in -- I
21 originally grew up in Alexandria, Louisiana. Central
22 Louisiana.

23 Q. And how long have you been in Florida?

24 A. About 12 years.

25 Q. Did you move to Florida from Louisiana?

1 A. I did.

2 Q. Tell me about your -- well, we've got your
3 CV. I am not going to go into all of your education,
4 and work experience, and all that sort of thing. But
5 basically, you own and operate, is it WriteLoss? Is
6 that the name of the company?

7 A. Yeah, WriteLoss Claim Writing, yes.

8 MR. TOMKINS: Madam Court Reporter, that's
9 W-r-i-t-e, WriteLoss.

10 BY MR. TOMKINS:

11 Q. How long have you operated that business?

12 A. Since 2013.

13 Q. And tell the jury, if you would, please, sir,
14 just in simple terms, what does WriteLoss do?

15 A. We write estimates for insurance claims. We
16 write basically for the whole industry. We write for
17 adjusters, attorneys, contractors. We write estimates,
18 mainly in Xactimate. We write about \$60 billion a year
19 worth of line items.

20 Q. And as I understand, as you say, you all
21 write estimates for homeowners, lawyers, and also for
22 other -- or for construction firms, you all will handle
23 the estimate writing part of their business, even if it
24 doesn't involve some kind of claim; is that right?

25 A. That is true. And we don't usually write

1 directly for the insured, though. We usually work for a
2 contractor, adjuster, or an attorney.

3 Q. And when you say an adjuster, you are talking
4 about a public adjuster; is that right?

5 A. We often write for insurance adjusters as
6 well.

7 Q. Tell me, typically, what insurance companies
8 or adjustment firms that handle cases for insurance
9 companies do you write for?

10 A. Oh, Lord. There's a lot of them. And it
11 varies from time to time. Usually, we write more for
12 insurance company adjusters whenever we have large
13 catastrophes like, say, Hurricane Ian or Hurricane
14 Michael. And we'll pick up for a lot of the TPA firms,
15 Pilot, Colonial. Just a lot of different firms, we'll
16 do some -- we'll work for them episodically.

17 And there are some people we just -- some
18 independent adjusters we've just worked for, for years.
19 That's probably about eight percent of our business.
20 The rest of our business is mainly the other things that
21 I told you about.

22 Q. Tell me, other than this case, have you
23 worked with Morgan and Morgan before?

24 A. I've submitted some estimates to USA Damage
25 that, I think, went to Morgan and Morgan. But I haven't

1 been deposed or worked directly for Morgan on anything.

2 Q. What about the Nation Law Firm?

3 A. The Nation Law Firm is who I would have
4 submitted that work to. So it would mainly be -- I
5 mean, I've done quite literally nothing but send
6 estimates, and a few affidavits, and whatnot to Nation
7 Law.

8 Q. Can you give me some idea about how many
9 estimates you have prepared for someone at Nation Law?

10 A. We probably, over time, probably produced
11 maybe 120, 130, somewhere in that area. And that's a
12 guesstimate. I don't know that for the exact number,
13 but that seems about right.

14 Q. And as far as affidavits, any idea about how
15 many affidavits you might have submitted for them?

16 A. I think six or eight.

17 Q. And if I understand correctly, I think Nation
18 Law Firm has either merged with, been acquired by, some
19 manner affiliated with Morgan and Morgan. Do you know
20 if they were at the time that you dealt with them?

21 A. I don't know that. I just don't know.

22 Q. All right. So how many different law firms
23 would you say you've probably written estimates for, say
24 in the last five years?

25 A. A couple hundred.

1 Q. And did they all represent property owners,
2 insureds?

3 A. About 15 percent of that work is for defense,
4 and the rest of it is mainly plaintiff.

5 Q. Can you give me the names of a couple of
6 defense firms that you have written estimates for in the
7 last five years?

8 A. I cannot. I could give that to you. I could
9 ask my people to give me that. I just don't have it
10 handy.

11 Q. If you could just provide that to Ms. Fisher,
12 and she can pass it along to us.

13 A. Sure.

14 Q. Do you, by chance, know Jim Shoemaker there
15 in Florida?

16 A. That name sure is familiar. I'm not sure.

17 Q. Do you know John Freud?

18 A. Yes, I know John Freud.

19 Q. How many depositions would you estimate
20 you've given in the last year?

21 A. Eighty to ninety.

22 Q. And how many of those were -- well, how many
23 times have you testified in court live in the last year?

24 A. None.

25 Q. And how many affidavits have you executed for

1 counsel in the last year?

2 A. Probably 25 or 30.

3 Q. Do you own any other businesses, besides
4 WriteLoss?

5 A. My consulting company is called RiseDoc, Inc.
6 RiseDocument, Inc.

7 Q. Can you spell that for the court reporter.

8 A. R-i-s-e Document Inc.

9 Q. And tell me, what does that business do?

10 A. Mainly, what we do in that is, I do
11 appraisal, umpire work, and some expert work. It does
12 appraisal and umpire work.

13 Q. All right. You said -- who did you say hired
14 you in this case?

15 A. It would be USA Damage was originally who we
16 did the work for.

17 Q. And who would your contact person at USA
18 Damage be?

19 A. Chris -- is it Chris Knecht? I can look it
20 up, if you would like.

21 Q. Okay, and if you could spell that last name
22 for the court reporter.

23 A. Just one second. Let me see real quick.

24 MS. FISHER: K-n-e-c-h-t.

25 THE WITNESS: Yes.

1 BY MR. TOMKINS:

2 Q. What is your understanding of what USA Damage
3 does?

4 A. Mainly what they had us do was do assessments
5 on claims involving cast iron pipe damage. They did
6 have us do some other wind-oriented things, but
7 primarily cast iron pipe.

8 Q. And where is USA Damage located?

9 A. They are located in south Florida. I am not
10 sure exactly what city.

11 Q. How many jobs did you do for USA Damage
12 involving cast iron pipes?

13 A. Somewhere around 130 to 150. I'm not sure of
14 the exact amount.

15 Q. 130 to 150 different jobs?

16 A. We did them in several states.

17 Q. Do you know how many, besides this one, you
18 did in Tennessee?

19 A. I don't think we did any more than about 20
20 in Tennessee, maybe 25. Not that many.

21 Q. Were all of those jobs involving drafting an
22 estimate for getting access to a cast iron pipe plumbing
23 system and replacing those parts of the structure that
24 had to be removed or damaged to get access?

25 A. Yes, sir.

1 Q. Now, other than this case, have you ever
2 worked with DrainGo?

3 A. No.

4 Q. Now, I believe, if I understand the report
5 correctly, the actual physical inspection of the
6 Griffins' home was conducted by your employee, Joe
7 Segarra?

8 A. That's correct.

9 Q. And that was on May 5th, 2020?

10 A. Yes, sir.

11 Q. Were there any other inspections made of the
12 property on behalf of your company or USA Damage besides
13 that by Joe Segarra (phonetic)?

14 A. No, other than the plumber coming, we didn't
15 return to the property.

16 Q. And so there was the one inspection, other
17 than the inspection that the plumber made; is that
18 correct?

19 A. Yes, sir.

20 Q. What is Mr. Segarra's job title with your
21 company?

22 A. He's a senior inspector.

23 Q. Can you tell me a little bit about his
24 experience and qualifications?

25 A. Mr. Segarra is a retired sergeant in the U.S.

1 Army. He has been working for us for, I'd say, about
2 six-and-a-half years. He assesses pretty much any kind
3 of loss that there is. But I trained him years ago.
4 He's one of our top two guys in our business to do
5 estimates.

6 He'll run -- you know, his typical process is
7 he is going to run 3-D, a 3-D of the property to freeze
8 a moment in time, get the sketch right so the
9 measurements are correct. He's going to take pictures.
10 He's going to generally make scope notes about what he
11 finds. And then he produces those and sends them up to
12 our scoping group.

13 Q. Other than his training and experience with
14 your company, do you know if Mr. Segarra has any other
15 training or experience in building estimates?

16 A. His primary experience is with us. He has --
17 I believe he has a IICRC water WTR accreditation. I
18 think he also has a Haag Certified building envelope or
19 roof inspection. But other than that, no.

20 Q. He's not a licensed plumber or contractor; is
21 that correct?

22 A. No, he is not.

23 Q. Tell me, how did you determine the scope of
24 work for the estimate that was prepared in this case?

25 A. Well, in the case that we -- when we worked

1 for this particular client, we would be aware of the --
2 we would be aware of the condition of a pipe problem.
3 So we would go in and initially assess the loss. But
4 it's a little bit of a misnomer, because it breaks our
5 process just a little bit. Because what we do is we go
6 in and scan that, take pictures. And then we provide
7 that -- we produce the sketch, the floor plan. And we
8 would send that back to USA Damage.

9 Then they would send that floor plan to the
10 plumber. And then the plumber draws out where the pipes
11 are in the building so that we can see what is going to
12 be impacted in the structure at that point. And then at
13 that point, we create the actual estimate. Normally --
14 a normal process is we create the estimate when we're
15 there. But we get the scope all together. And we
16 create it and send it to the client.

17 But in this case, we sketch it, send it to
18 the client. They send the plumber out to figure out
19 where the pipes have to be touched. And then we do the
20 structural estimate.

21 Q. So just to put it in simple terms, if it was
22 fire or wind, you would visualize where the damage was
23 and write your estimates based on your observations. In
24 these kinds of cases, you get the diagram showing where
25 the plumbing system is situated. And that's what you

1 use in lieu of just the visual inspection. And then
2 write your estimate based on the location of the piping.
3 Is that a fair statement?

4 A. Yes, sir.

5 Q. I'm going to try to bring up a document.
6 Bear with me just a second. All right. Mr. Herring,
7 can you see the document that I put on the screen?

8 A. Yes, sir.

9 Q. I will suggest to you, that is a diagram
10 prepared by DrainGo showing the location of the cast
11 iron piping in the Griffin home and the location of
12 certain PVC piping. Have you ever seen that diagram?

13 A. Yes, sir.

14 Q. Is that the diagram off of which you prepared
15 your scope of work?

16 A. Yes.

17 Q. Now, as I understand Mr. Rooker's testimony,
18 they would go back, the orange portion, which the PVC
19 pipe, basically, they would take that out along with the
20 vent pipe, and then replace that with PVC in the
21 existing location of the cast iron pipe. Is that your
22 understanding of what plumbing work they would have
23 done?

24 A. Yes.

25 Q. And as I understand Mr. Rooker, that part of

1 the cast iron pipe that is running at pretty much kind
2 of a 45-degree angle there from the bathtub is all in
3 the crawl space of the home. Is that your
4 understanding?

5 A. I understand that it's -- he can access a
6 good bit of it through the crawl space, yes.

7 Q. And then that portion that runs out toward
8 the septic tank, once it exits the footprint of the
9 house, goes under a concrete slab porch for some number
10 of feet, and then out to the septic tank. Is that your
11 understanding?

12 A. Yes.

13 Q. And what part of the structure would have to
14 be torn out or removed to do that particular part of the
15 work? Can you tell me?

16 A. Well, as we understand it and as the plumber
17 has explained it to me, he's going to have to pierce
18 that brick wall, that exterior wall. And that's going
19 to affect the exterior facade of the building. There
20 was also some water damage to the wood floors that are
21 outside of this room. And also, it's going to
22 necessitate removing some of the fixtures in the
23 bathroom to make the repair.

24 Q. Tell me, the penetration in the outer wall,
25 that's on the rear elevation of the house, correct?

1 A. It is.

2 Q. And is there any reason that he couldn't use
3 the existing penetration through which the cast iron
4 piping now goes?

5 A. You will have to ask the plumber that. When
6 I spoke to him about this issue, because it was a
7 question on my mind, he told me that he was going to
8 affect the bricks and that he couldn't avoid it. And so
9 in this case, I'm relying on others because that is the
10 only information I could have relied on in this case.

11 Q. So you didn't make any determination yourself
12 as to whether or not there would have to be any
13 demolition of the existing structure to put the new
14 piping in, correct?

15 A. No, it was after the conversation with the
16 plumber that I understood that that was going to be
17 necessary.

18 MR. TOMKINS: Let's mark that diagram as
19 Exhibit 1 to the deposition, please, ma'am.

20 (Exhibit 1 was marked.)

21 BY MR. TOMKINS:

22 Q. Now, your estimate, do you have a copy of
23 your estimate there in front of you?

24 A. I do.

25 Q. The first thing I'd ask you, your estimate

1 includes the \$9952 estimate from DrainGo; is that right?

2 A. That's correct.

3 Q. And that would be, I think, the first line
4 item on your estimate, correct?

5 A. I believe you're correct, yes.

6 Q. Did you use Xactimate to prepare the estimate
7 in this case?

8 A. Yes, sir.

9 Q. Let me ask you, the next, Item 2 -- well,
10 actually 2 through 7 line items, you've got roof work.
11 What is that for?

12 A. He's replacing the cast iron pipe, which
13 means that you are going to have to put a new boot in
14 for the pipe that runs to the roof. And that's just
15 going to require some repair to the roof.

16 Q. Can you tell me why it would involve
17 replacing 64 square feet of the metal roofing?

18 A. Well, first of all, we wouldn't repair a, you
19 know, four-foot area of the metal roofing. You would
20 use larger panels. And so that's what you're seeing is
21 the larger panels. So it was just the effort to remove
22 everything around that pipe jack, and then to put a new
23 one in, and then to put the new panels down. That's it.

24 Q. Let me ask you this: If the plumber
25 indicated that he would just use the existing

1 penetration in the roof to remove the old vent pipe, and
2 put the new one in, and then put a new boot and flash
3 it, would you disagree with that approach, without
4 having to damage --

5 A. Are you saying that the plumber is -- just to
6 clarify, the plumber is replacing the boot?

7 Q. No. What I'm asking you is, the plumber
8 indicated that he would just simply take the existing
9 vent pipe out, put the new pipe in through the
10 penetration that exists, and then somebody else would
11 have to put a new boot and flash it. I guess my
12 question to you is, why would you have to take out any
13 part of the metal roofing to replace the vent pipe?

14 A. Because the vent pipe is, if you're replacing
15 -- if you're replacing the vent pipe, you've got -- it
16 basically has flashing that runs underneath the roof.
17 So if you were to remove that to replace it, you would
18 have to -- it would have to impact the roof in some way.
19 Because otherwise --

20 Q. You're going to basically take one panel off
21 and replace it, more or less?

22 A. It depends on how it's structured. But yeah,
23 it's going to be like be two panels. I mean, it's not
24 much at all.

25 Q. Now, the next, Line Items 8 through 10,

1 you're figuring to replace the entire concrete slab in
2 the back?

3 A. Yes.

4 Q. Now, the plumber says that he would cut a
5 trench in that, cut out the concrete, and then you could
6 patch it and refinish it. Is there any reason you
7 couldn't do that, rather than replacing the entire slab?

8 A. It depends on your definition of like kind
9 and quality, really. I mean, I can, of course, cut a
10 slab. And I can, of course, then fill that part of the
11 slab up. But I no longer have a monolithic pour
12 anymore. And I started with a monolithic pour, and I
13 don't have that anymore. So it's going to be different.
14 If that is considered to be a reasonable repair, I just
15 wouldn't normally consider that to be a reasonable
16 repair because it's like kind and quality.

17 Q. Let me ask you this: If you did cut it and
18 didn't replace the entire slab, but just filled it and
19 refinished it, could you get a reasonable appearance
20 where it would be uniform and consistent across the
21 slab?

22 A. I mean, are you basically suggesting that we
23 basically pour something over the entire slab on the top
24 and then --

25 Q. Well, I am asking you that, what can you do

1 to make it uniform in appearance?

2 A. Well, you would have to probably change the
3 height of it because you would have to add something on
4 top of it that would be a monolithic pour so you would
5 have the same appearance. But at that point, you have a
6 patch underneath it, which is going to create an
7 expansion point. So I'm just saying, it probably isn't
8 a -- it probably just isn't like kind and quality.

9 Q. Well, as far as the expansion, you want that
10 with your concrete, anyway, don't you, so it doesn't
11 crack in other places? I mean, all concrete has
12 expansion joints, doesn't it?

13 A. That's true. But what I'm saying is if you
14 put a trench in it and you just repour that, it's going
15 to expand it a different -- it's just not going to
16 expand the same way, partly because it's not the same
17 age. It's just -- but I mean, you could dress it up,
18 yes. You could dress it up if you put a -- you know, if
19 you resurfaced the whole top of the slab and make it
20 look pretty close to the same. Is it the same product?
21 No. But you could make it look close.

22 Q. Let me ask you about Items 11 through 16.

23 A. Yes, sir.

24 Q. That is on the rear elevation. You've got on
25 there to remove and replace 504 square feet of brick.

1 Can you tell me what area, what percentage of the rear
2 elevation that includes? The surface area, what
3 percentage of the surface area?

4 A. It's going to be all of the surface area on
5 the rear.

6 Q. And you are saying that that's what you need
7 to do because of cutting a new exit hole to run your
8 line out?

9 A. If we're going to remove brick, we're going
10 to end up having to affect the brick, yes.

11 Q. And on Line Item 14, you've got remove and
12 replace 240 square feet of framing?

13 A. Yes, sir.

14 Q. Why would it involve replacing 240 feet of
15 framing?

16 A. On this particular point, I would probably
17 believe that we need to reduce that. Because it was
18 originally thought, when we were doing this, that there
19 was going to be more destruction on the back of the
20 kitchen. And so I think that's where you were getting
21 that. But I think that that could be reduced.

22 Q. Reduced or stricken from the estimate?

23 A. I think it would be greatly reduced, yes.

24 Q. How much?

25 A. Probably, it would be -- I mean, it's

1 probably reduced by about 80 percent. It's pretty
2 substantial.

3 Q. And Line 16, the general framing labor, would
4 that be reduced as well?

5 A. Probably, that would be affected a little
6 bit.

7 Q. Can you tell us how much?

8 A. Probably about half.

9 Q. And let's look at Line Items 17 through 20.
10 Is that removal and replacement of the brick veneer on
11 the entire surface of the left elevation?

12 A. Yes, sir.

13 Q. And why would you need to do that?

14 A. Because it's continuous from the rear.

15 Q. So basically, what you're including is -- and
16 let's save some steps on the other -- is replacing all
17 of the exterior brick on the house because of the need
18 to replace some of the brick on the rear elevation; is
19 that what you are telling us?

20 A. Yes.

21 Q. So your estimate includes rebricking the
22 entire home?

23 A. Yes.

24 Q. Let me ask you, on Line Item 27, it says:
25 Carpenter general framer per hour. And underneath it

1 says: D&R wood ramp. Are you talking about demolishing
2 and removing a wooden ramp at the front of the home?

3 A. No, we're talking about detaching and
4 resetting.

5 Q. Is that like a -- what kind of ramp is that?

6 A. It's a wood ramp. I believe we've got a
7 picture of it. I am not able to reference a picture of
8 it. It's just a basic ramp.

9 Q. Is it a ramp like somebody would use if they
10 had a wheelchair user or somebody with limited mobility?

11 A. Yes.

12 Q. And why would you take that off?

13 A. Because if you're replacing the brick, you
14 would have to remove it to get access to the brick.

15 Q. And Items 31 through 35, the right elevation,
16 again, you're including that based on the assumption
17 that you would replace all of the exterior -- all of the
18 brick on the exterior of the home to match; is that
19 right?

20 A. Yes, for uniform appearance, yes.

21 Q. Now, as far as wood flooring, if I remember
22 correctly, the testimony of the homeowner was that there
23 was some damage right outside the bathroom door. Is
24 that your understanding, some water damage?

25 A. Yes.

1 Q. And your estimate includes replacing all of
2 the hardwood throughout the house; is that correct?

3 A. Let me explain here.

4 Q. If you will, can you give me a yes or no on
5 that, and then explain?

6 A. At the present state of my estimate, no, it
7 doesn't say to replace the floor. I believe it probably
8 needs to be replaced, but what we specified was the
9 entire floor to be sanded and refinished.

10 Q. I'm sorry, yes, that's right, refinished. So
11 are you saying today that it needs to be replaced rather
12 than refinished?

13 A. I think if we were to do this under -- I
14 think it would be reasonable, okay, to replace the
15 entire roof -- I mean, replace the entire floor for the
16 simple reason that because it's water damaged and
17 because that water damage seeps into the wood, we're
18 probably still going to have to replace some small
19 percentage of that wood. Because it's not going to
20 restore the same way.

21 So I don't know that we can get that same
22 wood in that same pattern with the same -- you know,
23 because it's a very -- if you look at the wood, it's a
24 pretty particular patterned wood. So I just, I think it
25 would be -- I think we run the risk, if we just refinish

1 it, of having some problem right there at the bathroom,
2 at the entry of the bathroom.

3 Q. You did not include in your estimate
4 replacing any of the hardwood, but rather you included
5 refinishing all of it?

6 A. I did. And I'm comfortable with that. I'm
7 just saying that probably, if you were to push me on
8 this, if it was my home, I would replace the whole
9 thing. Because I don't know that I can match it
10 perfectly because of the water damage.

11 Q. But that's what you included in your
12 estimate, was to refinish?

13 A. Yes, sir, that is correct.

14 Q. And had you thought that was an inappropriate
15 repair, you would not have included that in your
16 estimate, would you?

17 A. No, I wouldn't have -- if I didn't think it
18 was appropriate, I wouldn't have included it. I'm just
19 making a note that, under a strict definition, I might
20 want to amend that, just like I would want to take out
21 some of the framing. Because it was probably over, this
22 might be under scoped. But you are correct, we did
23 specify to refinish.

24 Q. Tell me, in the bathroom, I think you
25 included removing and replacing ceramic tile; is that

1 correct?

2 A. Yes.

3 Q. What wall or walls is that ceramic tile on?

4 A. Ceramic is on the walls. So I believe four
5 feet up.

6 Q. All of the walls in the bathroom, other than
7 the door opening?

8 A. Right.

9 Q. And tell me, what necessitates replacing the
10 ceramic tile, in your opinion?

11 A. You're going to -- because the plumber said
12 he was going to -- because the plumber said whenever he
13 had to redo this piping, it was going to affect that
14 exterior wall.

15 Q. The exterior wall of the bathroom?

16 A. Yes, sir.

17 Q. You've got to remove and replace the light
18 fixture in the bathroom. What would necessitate
19 replacing the light fixture?

20 A. Is it remove and replace, or is it detach and
21 reset?

22 Q. It shows remove and replace, as I understand
23 the estimate.

24 A. It should probably be detach and reset. What
25 line is that, if you don't mind?

1 Q. Hold on just a second. That is Page 5 or 6.
2 Let's see. Line 48.

3 A. That's a wall sconce. Let's see. They're
4 referring to this light over the mirror. And I mean, it
5 would probably have to be detached and reset during this
6 process. I don't think it needs to be replaced.

7 Q. What about Line 49, on the bathroom mirror,
8 you've got remove and replace. Should that be detached
9 and replaced?

10 A. Generally speaking, they're going to put
11 those stupid mirrors in with a construction adhesive.
12 And nine times out of ten, they don't come out easy.

13 Q. And then Line 50, you've got replacing the
14 window blind. Could that not be taken down and put back
15 up?

16 A. That probably needs to be detached and reset.
17 That's reasonable.

18 Q. Then Line 55, you've got replacing a
19 ventilation fan. Why would you replace the ventilation
20 fan?

21 A. It must have been talking about this wall
22 heater. Because I don't see a ventilation fan in this
23 room.

24 Q. On Line 55, he refers to it as being a
25 ventilation fan, correct?

1 A. Yeah, but that's wrong. It's not a
2 ventilation fan. In fact, just reviewing this, it's got
3 that if you're removing the tile, you're going to touch
4 this wall heater. And I don't think you can replace the
5 wall heater. I think it's probably outside of code.

6 Q. Do you know that?

7 A. I don't know that for sure. That's --
8 honestly, that's a guess. I just don't know that you
9 could put it back.

10 Q. Let me ask you, you've got on your estimate
11 to remove and replace the sink, tub, and toilet. Is
12 there any reason you can't just take those out and reset
13 them?

14 A. You could probably detach and reset the
15 toilet. And more than likely, you could do it with --
16 you could do the same with the vanity. Yeah, I think
17 you could detach and reset them. I think that that's
18 reasonable.

19 Q. And the tub and shower door, any reason you
20 couldn't remove them and reset them?

21 A. You would probably have to replace the shower
22 door just because of how it's set in the -- just because
23 how it looks like it's mortared into the tile.

24 Q. What about the tub?

25 A. I think you could leave the tub in place. I

1 think you would do the door, but not the tub.

2 Q. Tell me, have you ever had any direct
3 conversations with the Griffins?

4 A. No, sir.

5 Q. Do you know if Mr. Segarra did?

6 A. I believe the Griffins were present when he
7 was there, yes.

8 Q. Do you know if the Griffins ever advised Mr.
9 Segarra that they intended to remodel this bathroom
10 anyway?

11 A. No. We didn't have any -- I don't have any
12 knowledge of that.

13 Q. Let me ask you, on Line 122, it shows -- and
14 that's under general conditions. It shows R&R
15 sheathing, 128 square feet. Where is that?

16 A. We typically do that to set plywood
17 underneath the dumpster to avoid damage to the driveway.

18 Q. Well, that says remove and replace sheathing?

19 A. It's... I mean, they have to set it and
20 remove it. It's a pretty -- I mean, you could do
21 material only, I guess, and just add some time to
22 actually put it there, and put it back, and pull it out.
23 But it's just CDX that you put underneath the feet of
24 the dumpster to avoid damage to the home.

25 Q. And Line Item 124 says: Mason bricks, slash,

1 stone per hour, \$80 an hour. And it looks like it's --
2 what is it, 65 hours?

3 A. Yes, sir.

4 Q. What is that for?

5 A. That's for -- just, we note it when we do any
6 kind of brick work inside of Xactimate. It usually is
7 -- it kind of minimizes the total time needed for
8 masonry. And so we usually add a lit bit of time.
9 Because it's usually a slightly larger job than
10 Xactimate makes it out to be.

11 Q. So let me make sure I understand, so the jury
12 will understand. Xactimate bases its estimate numbers,
13 obviously, on unit pricing that you insert, and also the
14 scope of the work, as far as the dimensions, and that
15 sort of thing. And it includes both labor and material.
16 But it's your belief that the labor amount that
17 Xactimate uses by default is not enough, and you've
18 added on an additional 80 hours on top of that?

19 A. Yes, sir. Xactimate does -- Xactimate is
20 basically -- how they state it is that it's a general
21 guide and that the estimators are responsible for
22 particular market conditions. But Xactimate, in
23 general, has a few areas where it has some serious
24 problems. And one of those is on masonry. And the
25 other is paint. They just usually seem to undershoot

1 the cost of what those two services are.

2 Q. You've added on an extra \$6,240 for masonry
3 work?

4 A. Yes, sir.

5 Q. And that's based on an additional 80 hours
6 over and above what the Xactimate estimate calls for,
7 correct?

8 A. Yes.

9 Q. Did you determine the 80-hour total?

10 MS. FISHER: Are you saying \$80 an hour or 80
11 hours?

12 MR. TOMKINS: Additional 80 hours.

13 Additional 80 hours, how did he come up with an
14 additional 80 hours.

15 THE WITNESS: We put a certain amount of time
16 for all of the windows because all of the work around
17 the windows is not usually included in Xactimate. We
18 also added, per elevation, I think we added another 11
19 hours each for each elevation.

20 MR. TOMKINS: Can we take a five-minute
21 break?

22 (Recess observed.)

23 BY MR. TOMKINS:

24 Q. Mr. Herring, let me ask you to look at Line
25 Item 125.

1 A. Yes, sir.

2 Q. That is supervision, management supervision,
3 for the job; is that right?

4 A. That is particularly -- if you look at Line
5 112, you will see supervision, which is actually
6 supervision. And then Line 125, it says safety
7 underneath it. That is just basically an OSHA
8 requirement that any time you're using anything
9 mechanized, whether it be a saw, whether it be a
10 skid-steer, whatever, whether you're dropping a
11 dumpster, whatever it is, you're supposed to have a
12 safety supervisor on the ground that is with it at all
13 times.

14 Q. Would it be typical for any general
15 contractor that would handle a job of this magnitude
16 that they would have a safety officer on staff and use
17 them, and that would be part of the overhead of the
18 business?

19 A. Overhead typically doesn't involve site
20 specific things. So I wouldn't say that it was normally
21 a part of overhead.

22 Q. Would a general contractor that you would
23 typically hire for this kind of job charge extra for
24 that safety officer?

25 A. If he lived within 100 miles of someone who

1 enforced OSHA regs, yes. Just being completely honest
2 there. He wouldn't if there was no OSHA.

3 Q. You've got, on Line 28, 20 hours for an
4 electrician. What would be the work involved with an
5 electrician?

6 A. Well, we were going to be touching the
7 exterior walls and we had electrical that was going to
8 be affected in the bathroom. And I think that there was
9 going to be some electrical in the exterior wall. That
10 20 hours -- let's see. It normally costs us about \$1200
11 to get an electrician to come out. And so we just
12 figured that that's going to be part of the mix.

13 It's possible that they wouldn't have to use
14 that much electrical. It is possible, depending on how
15 much they were taking off the back wall.

16 Q. Let me ask you, Line Item 130, you've got a
17 labor minimum for water extraction and remediation?

18 A. Yes.

19 Q. What is that for? What water extraction
20 would be involved in this job?

21 A. Well, the fact that it's a minimum means that
22 there was a really, really tiny amount of it. And so
23 it's just putting the -- let's see here. It's that in
24 the bathroom, and they used some antimicrobial. That's
25 the only place that we used anything like that. And it

1 was such a minimal amount that it would up -- it kicked
2 on the minimum in Xactimate for that.

3 Q. Let me ask you to look at Page 13 of your
4 estimate.

5 A. Yes, sir.

6 Q. You've got a total for other structures,
7 \$264.48 before overhead and profit. What is that for?

8 A. Let me see if something would have grabbed
9 that delineation. Probably detaching and resetting that
10 ramp. It would have been just picked up as other
11 structures. I don't know that it technically meets that
12 definition, but I think that's where it would be.

13 Q. All right. Tell me, how much have you been
14 paid or how much has your company been paid to date on
15 this case?

16 A. I believe we've been paid \$550.

17 Q. And how many estimates have you written in
18 this case?

19 A. I am going to define what I'm saying here so
20 it's not confused. There are a lot of edits that
21 happened during the process. But basically -- just one
22 second here and I will tell you. You just would not
23 believe how regular the name Griffin is in my world. So
24 many Griffins.

25 So basically, we had a sketch that was

1 created on May the 6th. That was after Mr. Segarra went
2 to the site. We sent that sketch to USA Damage. They
3 got that to the plumber. After the plumber got back to
4 us, we then wrote a scope of the damages. Had the
5 plumber's estimate at that point. And we wrote one
6 estimate on October 21st.

7 Then we got word that this was -- let's see.
8 In October -- no, in May of this year, we got word that
9 this was going to be a subject of litigation. And so we
10 returned to the estimate. We created several updates,
11 as we were discussing it. And then so basically, the
12 estimate was ultimately edited about six times until it
13 got to the form that you presently see it.

14 Q. Now, let me show you -- can you see the
15 document I just put up on the screen?

16 A. I can.

17 Q. Hold on. That's not the one I wanted to put
18 up there. Bear with me.

19 A. Take your time.

20 Q. I think I have the right one up now. I've
21 got a letter and estimate from USA Damage Response Team
22 dated October 22, 2020. It says it's directed to the
23 Nation Law Firm. Is that an estimate that you prepared?

24 A. Yes.

25 Q. And I believe the amount of that estimate was

1 34 -- well, let's see. I will look before any
2 application of depreciation here. It looks like it was
3 \$37,014.13; is that right?

4 A. That is correct.

5 Q. What did you use to develop your scope of
6 work on that estimate?

7 A. We used the scope notes that were originally
8 provided, that Bryan Messick in my office put together
9 from Mr. Segarra's estimate -- I mean, site visit, after
10 we got the plumbing report in.

11 Q. So this is based on the report from the
12 plumber, as we discussed earlier, as to the scope of
13 what they proposed to do, and then the site inspection
14 by Mr. Segarra?

15 A. Let me delineate just one thing you are
16 saying here. When you say the scope provided by the
17 plumber, it is quite literally the schematic or the edit
18 to the schematic that was provided by the plumber. It
19 wasn't, per se, a scope. That's why there are sometimes
20 some edits that happen to it subsequent to that because
21 there are some things that need to be cleared up.

22 Q. Let me ask you this, so I'm clear: Other
23 than oral communication with DrainGo or a representative
24 of DrainGo, did you get any other information from them,
25 other than the diagram that we were looking at earlier?

1 A. At that point, that's all we had gotten.

2 Q. So you had not gotten anything else, either
3 digital or in writing?

4 A. No.

5 Q. And at that time, what, as I understand, they
6 proposed to replace the cast iron plumbing, as per that
7 diagram that we looked at; is that a fair statement?

8 A. Yes.

9 Q. And based on that, you wrote this estimate
10 for \$37,000, correct?

11 A. Based on our understanding at the time, that
12 is correct.

13 Q. Then you wrote another estimate, which I
14 believe -- well, you said you had about six. What was
15 the amount of the next estimate that you wrote?

16 A. There's a couple of different ones at 102.
17 And I think there was one in here that added some COVID
18 oriented protocols that were ultimately removed. And
19 that was why one of the edits took place.

20 Q. If you could, give me the amounts of each
21 estimate that you wrote, the date and the amount.

22 A. On August 21st, 2020, \$34,344.61.

23 Q. I am sorry, 34?

24 A. \$34,344.61.

25 Q. All right.

1 A. On October the -- I'm sorry. On May the 13th
2 of this year, the grand total was 102,681.76. And then
3 on the same day, actually -- this may not have been
4 actually sent to the client, actually. So I'm talking
5 about some internal things. We created an estimate that
6 included the COVID protocols, 132,046.17. And then we
7 went back, basically, to the former estimate in our
8 final version, which was 102,681.76. And that happened
9 May the 16th of this year.

10 So we internally dealt with this in between
11 May 13th and May 16th of this year and ended up in the
12 amount that we were discussing today, for the majority
13 of our time.

14 Q. So we had basically four estimate totals.
15 And the final number at 102,681.76?

16 A. Yes, sir.

17 Q. Tell me, if you would, please, sir, what
18 information did you get that caused your total to go
19 from 34,344.61 to 102,681.76?

20 A. Well, there's a couple of things. As I
21 mentioned to you earlier in our conversation, that I had
22 become aware that this was going to -- that I was going
23 to be deposed on this, so I needed to look at it more
24 thoroughly. And I noted, number one, that we needed to
25 deal with the flooring, which we hadn't dealt with at

1 that point. And that, ultimately, I discussed with the
2 plumber the fact that he was going to damage the rear
3 wall and that was going to affect the bricks.

4 That's where most of the major changes came
5 from. Of course, also, we removed the COVID protocols
6 because those weren't really necessary at this juncture.
7 Incidentally, what we didn't do to this, which we would
8 have normally done before we did this, was we didn't
9 update the price list to a current price list. Which I
10 think would have been reasonable and appropriate to do
11 as well.

12 Q. So the \$34,000, you're telling me, did not
13 include the flooring refinished throughout the house,
14 the hardwood flooring?

15 A. I do not believe that it did. I can confirm
16 that, but I do not believe that it did. Hold on one
17 second here. It did not.

18 Q. If I'm looking at that estimate correctly, it
19 included some hardwood floor repair in the hall and the
20 living room; is that correct, outside the bathroom? No,
21 I take that back. Let me direct your attention. I
22 think the living room starts at Line Item 63.

23 A. Right.

24 Q. So in simple terms, the original estimate
25 included the repair -- the plumbing replacement, the

1 roof work related to the plumbing replacement, and the
2 repair work, remediation work, in the bathroom. Is that
3 a fair statement?

4 A. It included the roof. It included the roof,
5 the plumbing, and damages to the bathroom. And some
6 COVID protocols, was the main things.

7 Q. And so if I understand what you're saying
8 today, the COVID protocols would no longer be
9 applicable; is that right?

10 A. I don't believe they would be applicable.

11 Q. Tell me, on your estimate there dated October
12 22, 2020, why did you not include the flooring repairs
13 outside the bathroom?

14 A. Because I hadn't looked at this estimate yet.
15 And I hadn't just given it a critical eye. And I just
16 -- I noted the damage. And I noted that it was going to
17 -- that I was going to be sitting in this chair and I
18 didn't want to not deal with it because it was an
19 obvious thing that should have been added.

20 Q. Well, surely you looked at this, and reviewed
21 it, and critiqued it before mailing it to the Nation Law
22 Firm on October 22, 2020, did you not?

23 A. I did not look at this initially. As a
24 matter of fact -- let's see. Hold on a second. I
25 didn't send this to Nation. Let me just see here. Hold

1 on.

2 Actually, they sent this particular file to
3 -- the particular file you're discussing with me, they
4 sent it to the client on October 21st, 2020. And we
5 didn't begin to touch it again until October 10th, 2021.

6 Q. All right --

7 A. So my point is that they sent this out. And
8 I mean, it was before we -- they sent that out, but I
9 really hadn't touched it at that point. I'm just
10 speaking specifically about me. The estimation staff
11 had looked at it. And I think they just made some
12 errors. I mean, the main thing that made me go back
13 into it was the COVID stuff. I needed to make sure that
14 was removed.

15 Q. Who was the estimation staff that reviewed
16 this before you sent it to USA Damage Response Team?

17 A. It was -- the gentleman that wrote the
18 estimate was Dejan, D-e-j-a-n. His last name is very
19 hard to spell. It's M-l-a-d-e-n-o-v-i-c. I will give
20 you \$5 if you can say it. He wrote that estimate
21 originally off of a scope that was provided by Bryan
22 Messick in my office. That's B-r-y-a-n. Messick is
23 M-e-s-s-i-c-k.

24 Q. Was that after Mr. Segarra had inspected the
25 premises?

1 A. That was after we received the sketch from
2 the plumber.

3 Q. And was it after Mr. Segarra personally went
4 to the premises, which I believe was in August of 2020?

5 A. Yes, it was in October that we got that back
6 from the plumber.

7 Q. So at the time that this original estimate,
8 of some \$34,000 was written, you had gotten information
9 from the plumber and Mr. Segarra had personally
10 inspected the loss location; is that correct?

11 A. That's right.

12 Q. Why was the replacement of all of the brick
13 on the exterior of the home not included in the original
14 estimate?

15 A. As I told you a little while ago, because I
16 had not personally spoken to the plumber, and I wasn't
17 aware that it was going to affect the rear elevation of
18 the property, until I did.

19 Q. So when did you speak to the plumber after
20 that first estimate?

21 A. My staff spoke to the plumber -- I'm not sure
22 what date, but it was after this -- it was when I asked
23 a series of questions to staff, and I know that the
24 plumber was contacted at that point. And then I spoke
25 to the plumber to confirm those things before we went to

1 deposition.

2 Q. And what was that series of questions that
3 you posed to your staff?

4 A. My questions to the staff was, is there some
5 reason why we have not touched the floor that was
6 damaged? And if we're running pipe out the back of the
7 building, if we're touching that concrete slab, if it's
8 typical of most cast iron things that we do, are we
9 going to be affecting the brick? Which they said yes,
10 we were.

11 And then I confirmed with the plumber again,
12 before we went to deposition. Because I wanted to -- I
13 knew that was going to be a point of some contention.
14 And I wanted to make sure it was confirmed.

15 Q. So let me make sure I understand. From
16 August of 2020 until May of 2022, there were no
17 modifications to your estimate; is that right?

18 A. Right. We didn't -- it wasn't really -- once
19 it was sent to the client, unless they had an issue with
20 it, we wouldn't have done anything to it at that point.

21 Q. And you're saying that the first estimate
22 went out to USA Damage Response Team, who had hired you,
23 without your review; is that correct?

24 A. I did not personally review it. That is
25 correct.

1 Q. Whose job would it have been to have reviewed
2 that before it went out to make sure that it was
3 accurate and correct?

4 A. Dejan or Michael Halkos (phonetic), either
5 one of them, would have been authorized to send
6 something to a client because they would have been the
7 ones responsible for checking it.

8 Q. Are they still with you?

9 A. They are.

10 Q. And during that two, almost two-year
11 interval, nobody raised any question about the brick or
12 the flooring?

13 A. No.

14 Q. You raised that in your own mind when you
15 went back and looked at the estimate to prepare for a
16 deposition in the case; is that correct?

17 A. I reviewed it because I wanted to -- I don't
18 like to be in deposition and not have a good
19 understanding of the scope and any edits I would have
20 made otherwise, I would have done at that point.

21 Q. Let me ask you, the estimate for 132.046.17,
22 without going into every line item, is the central
23 difference in that and the 102 estimate the removal of
24 the COVID protocols?

25 A. Yes, sir.

1 Q. Any other substantive changes?

2 A. There was a few other minor things, but
3 nothing major.

4 Q. Do you recall what those were?

5 A. I don't.

6 MR. TOMKINS: Let's make some exhibits here
7 real quick. The October 22, '20 estimate that's on the
8 screen, Ms. Court Reporter, what exhibit number would
9 that be, 3 or any?

10 MS. FISHER: I have Exhibit 1 to the
11 deposition the diagram of the plumbing report. So it
12 might be Exhibit 2. I might have missed one.

13 MR. TOMKINS: Carole, do you show any others?
14 I don't think there are any others either. Let's go
15 ahead and do this, and if we miss one, we can clean it
16 up. This October 22, 2020 estimate, let's make that 2.

17 (Exhibit 2 was marked.)

18 MR. TOMKINS: And let's make his disclosure
19 3.

20 MS. FISHER: Just like the full expert
21 disclosure, everything related to him?

22 MR. TOMKINS: Yeah, his full expert
23 disclosure, we'll make 3.

24 MS. FISHER: Okay.

25 (Exhibit 3 was marked.)

1 MR. TOMKINS: And let's see. Bear with me.
2 I was thinking there was one other one. And let's do
3 this, I've got to find it, but I'll e-mail it to
4 everybody. The 5/13 estimate in the amount of
5 132,046.17, we'll make that -- what would that be, 4?

6 MS. FISHER: Yes.

7 (Exhibit 4 was marked.)

8 BY MR. TOMKINS:

9 Q. All right. Mr. Herring, did you bring any
10 documents today that were requested in our most recent
11 notice of deposition?

12 A. I sent every document that I have to Ms.
13 Fisher. Is that correct?

14 Q. I don't know.

15 MS. FISHER: I think so. Jim, we've -- those
16 three estimates you just listed, the one from October of
17 2020, the 132K, and the 102K are the only three
18 estimates I have. And then invoices from USA DRT, which
19 list the line item for them, have been sent to you in
20 discovery. I don't have any other invoices.

21 BY MR. TOMKINS:

22 Q. Let me ask you, Mr. Herring, are there any
23 e-mails or other communications between your firm and
24 the plumbing company?

25 A. No, there's no e-mails between us and the

1 plumbing company. The only communication we have was
2 when they sent -- when USA Damage sent that back to our
3 system as an edit to include the plumbing information.

4 Q. Do you have any handwritten notes in your
5 file regarding this job?

6 A. No, I do not.

7 Q. Do you have any computer notes?

8 A. I have the original scope notes that Bryan
9 Messick, in our office, made. And outside of that, no.

10 Q. Do you have any notes --

11 MR. TOMKINS: Well, let me ask. I would ask
12 for a copy of those as a late-filed 5.

13 (Exhibit 5 was marked late-filed.)

14 BY MR. TOMKINS:

15 Q. Do you have any notes in your file relative
16 to your decision to go back and add the flooring and the
17 brick?

18 A. No, I just called one of our estimators and
19 said that, you know, we need to go back and look at
20 these things and made specific adds. Just be a voice.
21 I also touched the file at some point and made some
22 edits to it myself.

23 Q. But what I am asking about, do you have any
24 notes that you made --

25 A. No, sir.

1 Q. -- about your decision to go back and add
2 those things?

3 A. No, sir, it was literally a phone call I
4 made. That's all.

5 Q. Now, you don't do -- I mean, your company
6 doesn't do this type of work; is that right? It just
7 simply estimates the cost of the work?

8 A. Do we do construction; is that what you're
9 asking?

10 Q. Yeah, you all don't do any construction or
11 remediation work yourselves; is that right?

12 A. No, we estimate the repair to real property.

13 Q. Any contractors with whom you all have
14 reviewed your numbers to secure an agreed price to do
15 this work?

16 A. We have not talked to any contractors.

17 Q. Now, let me ask you this: What is your
18 understanding about where the penetration is in the
19 exterior wall, the back wall, of the Griffins' home,
20 where the drain line goes through? Is it your
21 understanding that that is above or below grade?

22 A. I believe it's technically, if you want to
23 get down to it, it's basically at grade. It's -- what
24 the plumber told me specifically was it was going to
25 impact the bricks right at the bottom of the bricks and

1 there was nothing they could do about it. So I assume
2 it's got to be right at grade.

3 Q. Is it your understanding that it would be
4 exposed or it would be hidden based on --

5 A. He did not say it was exposed. He said it
6 was going to affect the bricks. I did not ask him for
7 specificity on, you know, where the pipe was. I
8 assumed, because it's pretty common, that because of
9 what he -- because of his work, he was just going to
10 have to do that, and there was nothing he could do about
11 it.

12 Q. And which plumber told you that?

13 A. The plumber with Drain Right or Drain Co. --
14 hold on, I'll tell you. That would be Jimmy Rooker.

15 Q. And you would agree with me that if that
16 penetration didn't affect the visible brick or if they
17 could use the existing penetration and not have to make
18 a new hole, that none of that exterior brick work would
19 have to be done, correct, that you included in your
20 estimate?

21 A. I would agree with you, if the plumber said
22 the bricks have to go, they have to go. It's not my
23 opinion. It was just what I was explained. I mean,
24 that's why I did. So I mean, I can't really opine on
25 it, other than saying that Mr. Rooker said that that was

1 necessary. Incidentally, I checked with him twice on that
2 because I wanted to be sure that that was the case.

3 Q. When did you check with him twice on that?

4 A. I spoke to him yesterday, actually, to ask
5 the question again because I thought it would be a good
6 idea to just hear that one more time.

7 Q. And what did he tell you yesterday?

8 A. He said, yes, I'm going to have to impact the
9 bricks. I can't avoid it. I said, you're telling me
10 you can't avoid it? He said, yes, I can't avoid it.
11 That's what he told me.

12 Q. And he told you it would be the brick that is
13 exposed?

14 A. He said specifically -- I am not parsing
15 words with you, I am just telling you specifically,
16 okay? He said, the bricks are going to be impacted.
17 Yes, I can't avoid it. He didn't say the bricks that
18 are exposed. He didn't say it was going to be halfway
19 up the wall. He said, the bricks are going to be
20 damaged because of what I have to do.

21 Q. And you did not ask him if he was talking
22 about the brick below grade only, did you?

23 A. I had no reason to ask him that, no. I mean,
24 I assumed if there was some specificity, he would have
25 told me.

1 Q. And when was the other time that you asked
2 him specifically about that?

3 A. We spoke to them, I believe, in October.

4 Q. Of what year?

5 A. 2021.

6 Q. What brought it up in October of 2021?

7 A. As I stated before, I said that whenever I
8 was -- knew that this was going to be going to
9 deposition and possibly to trial, I needed to make sure
10 that I could understand everything about the loss that I
11 could understand. And so that's when it came up.

12 Q. And I am not trying to badger you or
13 anything. But I thought you said that was in May of
14 this year when you wrote the larger estimate for
15 102,681?

16 A. It was in October of 2021.

17 Q. And did you write a new estimate in October
18 of 2021?

19 A. The estimate -- yeah, we wrote the larger
20 estimate in... Let's see. I'm sorry. I told you wrong.
21 I was looking at a note that was higher up in this thing
22 that I'm looking at. I'm sorry. Just amend that. We
23 would have talked to him sometime around May 13th.

24 Q. So you would not have talked to him in
25 October?

1 A. Would not have talked to him in October.

2 That is incorrect. My action came in on this probably
3 in between May 13th and May 16th of this year.

4 MR. TOMKINS: Let's take a five-minute break.
5 Let me review this. I think I'm done, but let's take a
6 quick break. I'll make sure.

7 THE WITNESS: Sure.

8 MS. FISHER: Sounds good. Thank you.

9 (Recess observed.)

10 MR. TOMKINS: Those are all of the questions
11 I have.

12 MS. FISHER: Thank you. So let me just be
13 clear. The late-filed things you want from Mr. Herring
14 are a list of the defense firms he's done work for -- or
15 that's not a -- you didn't mark that an exhibit. That's
16 just something you want as a follow-up.

17 MR. TOMKINS: Yeah, I think the only
18 late-filed, I think, are the Messick notes.

19 MS. FISHER: Okay. David, can you just send
20 both of those to me?

21 THE WITNESS: I will do that. Thank you
22 both. Thank you, Mr. Tomkins.

23 MR. TOMKINS: Thank you.

24 FURTHER DEPONENT SAITH NOT.

25

1 CERTIFICATE

2 STATE OF TENNESSEE)
3) SS.
4 COUNTY OF DAVIDSON)

5 I, CAROLE K. BRIGGS, Licensed Court Reporter
6 within and for the State of Tennessee, do hereby certify
7 that the above deposition was reported by me and that
8 the foregoing pages of the transcript is a true and
9 accurate record to the best of my knowledge, skills, and
10 ability.

11 I further certify that I am not a relative,
12 counsel or attorney of either party nor employed by any
13 of the parties in this case or otherwise interested in
14 the event of this action.

15 IN WITNESS WHEREOF, I have hereunto affixed my
16 official hand on this 13th day of December 2022.

17


18

19

20

21

22



23 CAROLE K. BRIGGS

24 Shorthand Reporter

25 Tennessee License No. 345

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